FILED
NOV 30 192
WM. R. STANS

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 336.
LAKE SUPERIOR CONSOLIDATED IRON MINES, ET AL., Appellants,
vs.
SAMUEL LORD, ET AL.

No. 355.
GEORGE L. BURROWS, JR., ET AL., Appellants,
vs.
SAMUEL LORD, ET AL.

No. 388.
ROYAL MINERAL ASSOCIATION, ET AL., Appellants,
vs.
SAMUEL LORD, ET AL.

No. 389.
WILLIAM E. BOEING, ET AL., Appellants,
vs.
SAMUEL LORD, ET AL.

No. 390.
ROBERT E. WHITESIDE, ET AL., Appellants,
vs.
SAMUEL LORD, ET AL.

No. 391.
MERRIMAC MINING COMPANY, ET AL., Appellants,
vs.
SAMUEL LORD, ET AL.

No. 471.
HELEN P. BARDWELL, ET AL., Appellants,
vs.
SARGENT LAND COMPANY, SAMUEL LORD, ET AL.

BRIEF FOR APPELLEES.

CLIFFORD L. HILTON,
Attorney General of Minnesota,
G. A. YOUNGQUIST,
Assistant Attorney General,
PATRICK J. RYAN,
St. Paul, Minnesota,
Solicitors for Appellees.

Hayward Brief Company, 601-607 Fourth Ave. So., Minneapolis

SUBJECT INDEX.

Page.

Statement of the Case 1
Argument 2
State has power to tax royalties 3
The question is one of classification 5
Basis of classification 6
Act operates uniformly 13
Double taxation not prohibited 18
No impairment of contract obligation 19
Royalties received but not earned in 1923 19
Subject of the tax is within Minnesota 20
Payments under Sargent Land Company contract are within the act 29

LIST OF AUTHORITIES CITED.

Page.

Arkansas Gas Co. v. Railroad Commission, 261 U. S. 379. 34
Armour & Co. v. Virginia, 246 U. S. 1..... 6
Armour Packing Co. v. Lacy, 200 U. S. 226, 235.....6, 13
Atlantic Coast Line v. Daughton, 262 U. S. 413..... 28
Bristol v. Washington County, 177 U. S. 133..... 29
Burke Hollow Coal Co. v. Lawson, 151 Ky. 305..... 30
Citizens National Bank of Cincinnati v. Durr, 257 U. S. 99 24
Citizens Telephone Co. v. Fuller, 229 U. S. 322, 329, 331.. 5
Cooley on Constitutional Limitations (7th Ed.), p. 678.. 4
Cooley on Taxation (4th Ed.), Secs. 71, 72..... 3
Coulter v. Louisville & Nashville R. R. Co., 196 U. S. 599, 608 6
Cream of Wheat Co. v. Grand Forks, 253 U. S. 325..... 19
Dawson v. Kentucky Distilleries Co., 255 U. S. 288.... 18
Delaware Railroad Tax, 18 Wall. 206, 231..... 6
District of Columbia v. Brooke, 214 U. S. 138, 150..... 6
Florida Central, etc. v. Reynolds, 183 U. S. 471, 476..... 6
Fort Smith Lumber Co. v. Arkansas, 251 U. S. 532..... 19
Gillespie v. Oklahoma, 257 U. S. 501..... 28
Halla v. Rogers, 100 C. C. A. 263.....30, 31
Heisler v. Thomas Colliery Co., 260 U. S. 245....9, 10, 12, 13
Hodge v. Muscatine County, 196 U. S. 276..... 29
Hosack v. Crill, 204 Pa. 97..... 30
In re Rust's Estate, 213 Mich. 138..... 21
Lacoste v. Louisiana, 263 U. S. 545..... 19
Michigan Central Railroad v. Powers, 201 U. S. 245, 301.. 6
Middleton v. Texas Power & Light Co., 249 U. S. 153, 157..6, 8
Minnesota Loan & Trust Co. v. Douglas, 135 Minn. 413... 33
Moffitt v. Kelly, 218 U. S. 401..... 19
Mt. Sterling Oil & Gas Co. v. Ratliff, 127 Ky. 1..... 22

National Coal Co. v. Overholt, 81 W. Va. 427..... 30
North Missouri R. R. Co. v. Maguire, 20 Wall. 46..... 19
Northwestern Life Ins. Co. v. Wisconsin, 247 U. S. 132, 138 6
Ohio Tax Cases, 232 U. S. 576, 590..... 6
Oliver Iron Mining Co. v. Lord, 262 U. S. 172..7, 10, 12, 13, 14
Pacific Express Co. v. Seibert, 142 U. S. 339, 350..... 6
Panama R. R. Co. v. Johnson, 264 U. S. 375..... 34
Park v. City of Duluth, 134 Minn. 296..... 4
Rast v. Van Deman & Lewis, 240 U. S. 342, 357..... 6
Rogers v. Hennepin County, 240 U. S. 184..... 23
Royster v. Virginia, 253 U. S. 412.....8, 34
Saginaw v. Second National Bank, 213 Mich. 590..... 22
St. Louis S. W. Ry. v. Arkansas, 235 U. S. 350, 367..... 6
Savings & Loan Society v. Multnomah Co., 168 U. S. 421.. 25
Shaffer v. Carter, 225 U. S. 37.....16, 19, 25, 28, 29
Singer Sewing Machine Co. v. Brickell, 233 U. S. 304, 315. 6
Southwestern Oil Co. v. Texas, 217 U. S. 114.....6, 13
State v. Canda Cattle Car Co., 85 Minn. 457..... 18
State v. City of Ely, 129 Minn. 40..... 5
State v. Crete Mining Co., 204 U. S. 932..... 30
State ex rel. Mariner v. Hampel, 213 Mich. 590..... 22
State v. Minnesota Tax Commission, 128 Minn. 384..... 5
State v. Probate Court, 145 Minn. 155..... 19
State v. Royal Mineral Association, 132 Minn. 232..... 19
State v. Tax Commission, 136 Minn. 260.....19
State v. Wells-Fargo Co., 146 Minn. 444..... 5
State v. Western Union Telegraph Co., 96 Minn. 13..... 30
Sturdevant v. Thompson, 280 Pa. 233..... 30
Taylor v. Burns, 203 U. S. 120..... 31
Thompson v. Kreutzer, 112 Miss. 165..... 18
Thompson v. McLeod, 112 Miss. 383..... 18
Travis v. Yale & Towne Mfg. Co., 252 U. S. 60..... 28
Watson v. State Comptroller, 254 U. S. 122..... 11

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 336.

LAKE SUPERIOR CONSOLIDATED IRON MINES, ET AL., Appellants,

vs.

SAMUEL LORD, ET AL.

No. 355.

GEORGE L. BURROWS, JR., ET AL., Appellants,

vs.

SAMUEL LORD, ET AL.

No. 388.

ROYAL MINERAL ASSOCIATION, ET AL., Appellants,

vs.

SAMUEL LORD, ET AL.

No. 389.

WILLIAM E. BOEING, ET AL., Appellants,

vs.

SAMUEL LORD, ET AL.

No. 390.

ROBERT E. WHITESIDE, ET AL., Appellants,

vs.

SAMUEL LORD, ET AL.

No. 391.

MERRIMAC MINING COMPANY, ET AL., Appellants,

vs.

SAMUEL LORD, ET AL.

No. 471.

HELEN P. BARDWELL, ET AL., Appellants,

vs.

SARGENT LAND COMPANY, SAMUEL LORD, ET AL.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

There are seven suits before the court, and the contentions of the different appellants are set forth in five briefs. The

questions raised and the arguments made in these different briefs are such that they may be most conveniently answered in this single brief for appellees.

The facts are not disputed and are fully stated by appellants.

ARGUMENT.

The law attacked in this proceeding provides that there shall be levied a tax at the rate of six per cent "upon all royalty received" during the year ending December 31, 1923, and in each year thereafter, "for permission to explore, mine, take out and remove ore from land" in Minnesota. Royalties are defined to mean

> "the amount in money or of value of property received by any person having any right, title or interest in or to any tract of land in this state for permission to explore, mine, take out and remove ore therefrom."

It was approved as Chapter 226 of the Laws of Minnesota for the year 1923, on April 11, 1923.

It is claimed that the tax so assessed violates the provisions of Section 1, Article 9, of the State Constitution and the equality and due process clauses of Section 1 of the Fourteenth Amendment of the Constitution of the United States. And it is argued on the same grounds and for the same reasons that the act comes in conflict with other provisions of the State and Federal Constitutions, but we consider that those assignments need not be separately discussed. The contention that the act takes property without due process of law is founded upon the assertion that some royalties subjected to taxation are not within the taxing jurisdiction of the state, and that contention will be separately treated. And there are questions involving the interpretation of the act which will be briefly referred to.

THE STATE HAS POWER TO TAX ROYALTIES.

The constitution of the state of Minnesota imposes no limitation on the taxing power of the state other than that expressed in the provision of Section 1, Article 9, of the State Constitution which declares that "taxes shall be uniform upon the same class of subjects." The power of taxation, in the absence of specific constitutional limitations, is thus stated by *Cooley* in his Work on Taxation (4th Ed.), Secs. 71, 72:

> "Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right. Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes.
>
> Not only is the power unlimited in its reach as to subjects, but in its very nature it acknowledges no limits, and may be carried even to the extent of exhaustion and destruction, thus becoming in its exercise a power to destroy.
>
> If the taxes are oppressive or unjust, the only remedy is the ballot box and the election of new representatives. Security must be found in the responsibility of the legislature that imposes the tax to the constituency which must pay it. The judiciary can afford no redress against oppressive taxation, so long as the legislature, in imposing it, shall keep within the limits of legislative authority and violate no express provision of the constitution."

And in his *Constitutional Limitations* (7th Ed.), on page 678, Mr. Cooley says:

> "The power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it. It reaches to every trade or occupation; to every object of industry, use or enjoyment; to every species of possession; and it imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading."

That this is the law of Minnesota is declared in the following excerpts from decisions of the Supreme Court of Minnesota:

> "The power of the legislature to tax is plenary. It is not dependent on any constitutional grant. The power to tax inheres in the state as an attribute of sovereignty, and is without limit except as restricted by the constitution."
>
> *Park v. City of Duluth*, 134 Minn. 296.

> "The power to tax inheres in the state as an attribute of sovereignty and is not dependent upon a grant of power in the constitution. Constitutional provisions relating to taxation are not grants of power, but limitations upon the exercise of a power necessarily possessed by every sovereign state. Except as restricted by such provisions, the power of the state is unlimited.
>
> The only limitation in respect to the manner or method of apportioning either taxes or assessments imposed by this constitutional provision, is that they 'shall

be uniform upon the same class of subjects.'"

State ex rel. Oliver Mining Co. v. City of Ely, 129 Minn. 40.

There can be no doubt, therefore, of the power of the legislature of the state of Minnesota to tax royalties received for mining iron ore unless the imposition of such a tax is forbidden by the uniformity provision of the State Constitution, or some applicable provision of the Federal Constitution.

THE QUESTION IS ONE OF CLASSIFICATION.

Whether a law is in violation of this provision of the State Constitution is determined under familiar rules of classification, and those rules as applied in the courts of Minnesota are precisely the same as those which govern this court in determining whether or not there is a denial of equal protection of the laws under the Fourteenth Amendment.

State ex rel. St. Paul City Ry. Co. v. Minnesota Tax Commission, 128 Minn. 384.

State v. Wells-Fargo Co., 146 Minn. 444.

This being so there can be no distinction between the attack on this law under the State Constitution and the attack on it under the equal protection clause, and a discussion of its validity under the Fourteenth Amendment will cover the contention that it is in violation of the uniformity provision of the State Constitution.

These rules of classification have been frequently stated by this court. It is unnecessary, we think, to quote from the cases. We cite a few which state the rule and its limitations in various ways:

Citizens Telephone Co. v. Fuller, 229 U. S. 322, 329, 331.

District of Columbia v. Brooke, 214 U. S. 138, 150.
Rast v. Van Deman & Lewis, 240 U. S. 342, 357.
Middleton v. Texas Power & Light Co., 249 U. S. 153, 157.
Armour Packing Co. v. Lacy, 200 U. S. 226, 235.
Southwestern Oil Co. v. Texas, 217 U. S. 114.
The Delaware Railroad Tax, 18 Wall. 206, 231.
Pacific Express Company v. Seibert, 142 U. S. 339, 350.
Florida Central, etc. v. Reynolds, 183 U. S. 471, 476.
Coulter v. Louisville & Nashville R. R. Co., 196 U. S. 599, 608.
Michigan Central Railroad v. Powers, 201 U. S. 245, 301.
Ohio Tax Cases, 232 U. S. 576, 590.
Singer Sewing Machine Co. v. Brickell, 233 U. S. 304, 315.
St. Louis S. W. Ry. v. Arkansas, 235 U. S. 350, 367.
Armour & Co. v. Virginia, 246 U. S. 1.
Northwestern Life Ins. Co. v. Wisconsin, 247 U. S. 132, 138.

BASIS OF CLASSIFICATION.

We proceed to consider whether under the rules announced by this court in the cases referred to, the law providing for the taxation of royalties received on account of the mining of iron ore in Minnesota establishes a class of taxable objects which is forbidden by the equal protection clause of the Fourteenth Amendment.

Leasing iron ore lands in Minnesota is so prevalent and the leases are so nearly uniform that such leasing constitutes a distinct characteristic of mining there. Virtually all mining is done under leases. (Here we include "ore sales contracts" in the term "leases.") So true is this that it appeared in the record and is stated in the opinion, in *Oliver*

Iron Mining Co. v. Lord, 262 U. S. 172, 180, that in the year 1921, not a single owner was engaged in mining upon his own property. The record in the case now before the court shows that in the year 1923, the year with which we are concerned, four owners of iron ore properties engaged, under special circumstances, in removing ore from their property. Two of them mined ore as "cleaning up" processes. One of them took ore from a mine which was nearing exhaustion. The fourth operated a fee-owned property in connection with an adjoining mine held under lease (R. 55, Case No. 388). Altogether, forty-five million tons of iron ore were mined in Minnesota in 1923, and only three hundred eleven thousand tons were produced by mine owners. All other mining, more than ninety-nine per cent of it, was carried on under leases. Some mining companies paid under their leases as little as 12½ cents per ton to the mine owners while others paid as much as $1.25 per ton to them. A mine owner, therefore, participated in virtually every mining enterprise, and these owners received in 1923, out of the business of mining, amounts ranging from 12½ cents to $1.25 per ton from more than ninety-nine per cent of all the ore mined in the state. And it is to be observed that these leases were in every instance, and characteristically are, leases for long terms, corresponding, except in rare and accidental instances, with the life of the mine. Only in one respect is there a failure of the owner to receive royalties in exact accordance to the mining operation. The leases or contracts uniformly provide that if there shall be a failure to mine a minimum number of tons in any quarterly or annual period the owner shall, nevertheless, be paid a prescribed minimum amount in royalties, but the further provision is that the operator may apply such royalties to any ore, in excess of the minimum, subsequently mined. The legisla-

ture clearly could proceed on the practical and sensible assumption that this provision would not operate to work any substantial variance between ore mined and royalties received, since the self interest of the miner and conditions inhering in the mining business will bring about an exact identity.

Where a condition or practice respecting an important industry of the state is as prevalent and as permanent as leasing mining lands, and where the leases are of a uniform type, run for long periods, and provide for widely differing rates of royalty, we submit that the legislature has a right to adjust its taxing statutes to that practice. It may deal with problems of taxation in a practicable and workable way, and established methods of doing business and fixed relationships such as these may not only require legislative recognition, but they may and, we submit, they do here, justify a taxing classification which is designed to deal with divisions of interests or property which mine owners and operators have themselves made. It is not necessary that the legislature "cover the entire field of proper legislation in a single enactment" (*Middleton v. Texas Power & Light Co.*, 249 U. S. 153, *supra*). And where the field is covered by separate laws their validity will be considered in the light of their joint or concurrent operation (*Royster v. Virginia*, 253 U. S. 412).

In 1921 the Minnesota legislature adopted an act, hereinafter called the Occupation Tax Act, providing for the taxation of all persons or corporations engaged in the business of mining (Chapter 223, Laws, 1921). They were required to pay a tax equal to six per cent of the value of all ore mined. They were permitted to deduct from the value of their ore before reporting for taxation certain major mining costs. One of the principal deductible costs was the amount

paid in royalties to the owner of the land upon which mining might be carried on. At the same session of the legislature, a bill for the taxation of these royalty interests, also at the rate of six per cent, was presented, but was not reached for consideration during the session. At the 1923 session, the first thereafter held, the tax was imposed on royalties. The 1923 act completed the legislative program for imposing a tax on the business of mining. It was complementary to the Occupation Tax Act and together they operated to impose a tax upon the value of all iron ore mined in Minnesota during each year.

The legislature might have imposed a tax at a flat rate on the whole value of each ton of ore mined, and whether it called such a levy an occupation tax, a property tax, or by any other name, it would have been valid as against any objection which might have been offered under either the State or Federal Constitution (*Heisler v. Thomas Colliery Co.*, 260 U. S. 245). It might have imposed an occupation tax measured by a percentage of the value of each ton of ore mined either with or without deduction of costs of mining, and without allowing a deduction of royalties paid from any such value. The legislature, we believe, might have declared in the Occupation Tax Act that whenever payments of part of the value of ore mined, either in the form of royalties or otherwise, were made by the mine operators, to others, and were deducted from the value of the ore produced, the persons to whom such payments were made should be taxed at the same rate and in the same manner as mining companies were taxed. In any of these forms of taxation the state would have received taxes on the full taxable value of the ore produced. It was, nevertheless, recognized that although a tax at a flat rate on ore as it was mined, or a tax on the business of mining calculated on the full value of the ore

produced, would be, in law, equal and non-discriminatory, it would in truth and in fact, because of the prevailing characteristics of mining under leases, operate to impose an unequal and unjust burden upon some of those engaged in the business of mining. It would, unless there were a deduction of royalty payments, in fact operate to tax the mining companies on the owners' interest in the results of mining, which varied in the great degree which we have stated. If the legislature had the right to impose a six per cent tax on the value of iron ore as it was mined and ready for market, and if it had the right to impose a like tax on the business of mining, it must follow that, so far as classification is concerned, it had the right to impose such a tax in such a way as to make the tax payable by the persons who, regardless of mere matters of form, are part owners of the ore as it is mined or are part owners of the proceeds of the mining operation. Here lies the principal justification for taxing royalties.

Royalties received for permission to mine and market iron ore are so closely related to ore when mined that they may be separately classified for purposes of taxation, if the ore itself may be so classified. Royalties received as a result of the business of mining are so closely related to that business that they may be separately classified for the purposes of taxation, if the business of mining may be so classified.

This court held in *Heisler v. Thomas Colliery Co.*, 260 U. S. 245, that there was no violation of the Fourteenth Amendment in the taxation of anthracite coal when mined and ready for market even though no other commodity was similarly taxed, and in *Oliver Mining Co. v. Lord*, 262 U. S. 172, this court held, sustaining the validity of the Occupation Tax Act of 1921, that there was no violation of that amendment in the taxation of the business of mining iron ore though no

other business in the state was similarly taxed. In so holding we submit it determined the principal contention in this case against appellants.

There is a further basis for the classification of royalties as a separate subject of taxation arising out of the mining situation in the state and in connection with the enforcement of the occupation tax, which alone justifies it.

There are on the iron ranges, hereafter to be mined, a total of 1,300,000,000 tons of iron ore. Approximately one-third of this (344,000,000 tons) is owned by one corporation, through subsidiaries. None of the land containing this ore is under lease. The parent corporation causes all of its mining to be carried on by another subsidiary. These owning companies may, if they see fit, lease their lands to their related operating company at royalty rates which will consume all of the value of the ore which may be mined. If there were no tax on royalties, the occupation tax could thus be evaded as to a very large part of all the iron ore of the state. We do not say that such leases have been entered into. It is sufficient to declare that the legislature was justified in framing a law under which the tax burden will be the same whether ore be mined under a lease containing a high royalty or one containing a low royalty, whether it be mined by a lessee or mined by an owner. This ground for classification has been described as one based upon "the purposes and policy of taxation," and a classification reasonably made with such an end in view is permissible.

Watson v. State Comptroller, 254 U. S. 122.

Appellants deny the validity of these grounds of classification. They say that the owner of ore land does not differ from the owner of any other land; that one who

receives royalties arising out of the operation of ore lands receives only rents or money and is in no different situation from one who receives rents or moneys from any other source; that the right or privilege of leasing ore lands or of receiving income from them does not differ from the right or privilege of leasing any other land, or of receiving income from any other source. In this they simply say that all land is alike, all commodities are alike, all activities are alike, all business is alike, and all receipts are alike. They deny that royalties have any connection with the mining of iron ore, when they are in fact inseparable. They endeavor to deny the right of classification by stripping royalties of the characteristics which clothe them and distinguish them.

It could as well have been argued in *Heisler v. Thomas Colliery Co., supra*, that owners of anthracite coal mines did not differ from owners of any other land, that the proceeds of sales of anthracite did not differ from moneys received from any other source, that the right or privilege of mining coal differed in no way from the right or privilege of making such use of other lands as might be suitable. And these arguments might have been offered—and most of them were offered—in *Oliver Mining Co. v. Lord, supra*, in opposition to the right of the state to tax the business of mining. The decisions in those cases defeat all such arguments.

If iron ore may be taxed, as it is mined, as no other commodity is taxed, and if the business of mining iron ore may be taxed as no other business or activity is taxed, certainly royalties arising out of the mining of iron ore, dependent upon, as they are, and varying with the amount of iron ore mined, may be taxed as no other receipts are taxed. Whether one who receives royalties participates in the busi-

ness of mining, and the tax on royalties may therefore properly be called an occupation tax, or whether his situation so closely resembles that of one engaged in the business of mining that the tax should be described as an excise in the nature of an occupation tax, is of no great consequence here. The Fourteenth Amendment does not command that the states impose only occupation taxes, or property taxes, or any other kind of a tax. It neither prescribes nor forbids any form of taxation. It requires only that those similarly situated be treated alike. And we submit that royalties arising out of ore lands are so closely related to iron ore and to the business of mining iron ore that their separate classification has exactly the same basis as the classification of iron ore, or the business of mining it.

THE ACT IS UNIFORM IN ITS OPERATION.

The further claims are that even though the classification of royalties for purposes of taxation be justifiable, there has been a failure to include all royalties, and that as to royalties received under iron ore leases there is inequality and discrimination in the working of the law.

It is claimed that royalties received under licenses to manufacture or sell patented articles, royalties received on account of copyrights, and royalties received under leases permitting the taking of sand, gravel or stone from lands, should have been brought within the operation of the act. It is clear that the law is not invalid because of its failure to include any of these royalties.

Heisler v. Thomas Colliery Co., 260 U. S. 245.

Oliver Mining Co. v. Lord, 262 U. S. 172.

Armour Packing Co. v. Lacy, 200 U. S. 226, 235.

Southwestern Oil Co. v. Texas, 217 U. S. 114.

And if the law is not invalid because of its failure to include receipts such as these, it must be apparent that the attempt to take from royalties the characteristics which we have described, and liken the imposition upon them to taxes on dollars, or income, or real or personal property, must fail because royalties received under gravel leases more closely resemble iron ore royalties than any other class of receipts, income, or property which may be compared with them.

It is argued that the law applies only to royalties received under leases and that royalties received under instruments which are not leases in form are not reached. The law provides for the taxation of the

> "amount in money or value of property received * * * for permission to explore, mine, take out and remove ore."

The form of the instrument is immaterial. The tax is not confined to royalties received under leases merely because virtually all royalties are received under leases.

It is said that there is discrimination in imposing a tax on royalties because the ultimate result is to tax leased ore lands without imposing any equivalent tax on ore lands which are not under lease. In the one case royalties are received and that is the occasion of the tax. In the other they are not. A somewhat similar argument was made in *Oliver Mining Co. v. Lord*, and this court met it by saying:

> "Equality does not require that unproductive mining be taxed along with productive mining."

And we may add, paraphrasing the statement of the court in that case, that the tax will be imposed when the land is leased and the ore is mined.

Another objection is that when land bearing iron ore is

sold the owner receives in a lump sum that which he might receive in royalties under a lease, and that no royalty tax is imposed upon what he receives. A similar claim is made respecting a sale of leased land by an owner, and it is repeated as to the assignment of a lease for a lump sum by a lessee. Of course the act does not apply to one not receiving royalties and is not invalid on that account any more than the occupation tax was invalid because the business of mining was conducted only on a part of the ore lands in the state. If a mine owner sells his land, or if a lessee assigns his lease, the buyer eventually will lease the land and come within the class of those who receive royalties, or he will engage in the business of mining in which event he will pay a tax at the same rate.

The assertion is made that there is discrimination in favor of those who operate mines either on their own property or under leases and against those who receive and pay taxes on royalties. We need not point out that the legislature might to some extent distinguish between those who create taxable values in a business which they actively manage and conduct, in which they may give employment to large numbers of men, and those who taking no other part in the enterprise receive a part of the wealth which is thus made available. The answer is to be found in the facts. The mining company is permitted to deduct from the value of its ore certain expenditures which are necessary in its business. The owner who receives royalties is put to no similar expense. Those specified are the cost of removing the overburden in open pit mines and of constructing shafts and drifts in underground mines, and the proportionate share of real estate taxes described in the occupation tax act. But the first of these are incident to mining, not to leasing. The argument is that the lessor may strip, or

sink shafts, before effecting a lease. There is nothing in the records showing that any of the appellants have done so. As to taxes, the record is that they are paid by the lessees; all the leases before the court, and they are typical, so provide.

Some of the appellants work this same objection into an assertion that the royalty tax law cannot be deemed complementary to the occupation tax law because of the differences stated, and because one affects a business or occupation while the other must be met by one not so engaged. We answer that regardless of forms or definitions equal tax burdens are imposed under the two laws, and the Fourteenth Amendment requires no more than that. An argument resembling this was presented in *Shaffer v. Carter*, 252 U. S. 37, 56, based specifically on the proposition:

> "That since the tax is as to citizens of Oklahoma a purely personal tax measured by their incomes, while as applied to a non-resident it is 'essentially a tax upon his property and business within the State, to which the property and business of citizens and residents of the State are not subjected,' there was a discrimination against the non-residents. We are unable to accept this reasoning. It errs in paying too much regard to theoretical distinctions and too little to the practical effect and operation of the respective taxes as levied * * *."

There are objections that the law operates unequally upon those who receive and are taxed on royalties.

One specification is that there is inequality in the tax "upon the recipients of royalties according to the depletion or capital conversion represented by their royalties." The contention is illustrated by reference to the facts in the

Merrimac Mining Company case (No. 391). The situation disclosed there was an extreme and unusual one. A mining property, which was under lease, was purchased for a price which would admit only of the return of the capital investment and interest at a low rate. But the purchase was made because of the relationship of the mine to the principal property of the company, and the relationship was the determining factor in the transaction (R. 72, Case No. 391). There is no reason to believe that ordinarily there will be any difference between owners in respect of depletion or capital conversion represented in their royalties. Any tax at a flat rate, or a fixed percentage of value, on coal or iron ore as it is mined, would be open to the same objection. Certainly such a tax is not invalid because of the failure to take into consideration the return of varying capital investments which may have made the coal or iron ore marketable.

It is claimed, too, that the law will operate unequally as between those who incur accounting, engineering and like expenses in satisfying themselves that they are receiving all the royalties due them, and those who do not audit their returns. The theory is that such expenses should be deductible from royalties received. If such expenditures are a necessary incident of collecting royalties, all are treated alike in the failure to provide that they may be deducted. If they arise merely out of a choice of business methods, then the inequality is not in the law but rests in the discretion of the taxpayer, and no inequality from a constitutional standpoint exists. It may be observed, too, that accounting and like expenses may not be deducted under the occupation tax law.

We submit that the act is a proper exercise of the state's power of classification for purposes of taxation and that it

operates equally upon all those brought within its terms.

There are a few loose ends which may briefly be touched upon before taking up the question of situs.

Appellants cite certain cases which they deem pertinent. We instance *Dawson v. Kentucky Distilleries Co.*, 255 U. S. 288; *Thompson v. Kreutzer*, 112 Miss. 165; *Thompson v. McLeod*, 112 Miss. 383; and *State v. Canda Cattle Car Co.*, 85 Minn. 457. The first of these cases came to this court with the concession that if the law imposed a property tax it was in conflict with some provision of the constitution of Kentucky. This court held the law to be one imposing a property tax. The Mississippi cases arose under constitutional provisions which strictly limited the power of the legislature on matters of taxation. And *State v. Canda Cattle Car Company* arose in Minnesota under the constitution as it stood prior to 1906; then the requirements were that

> "all taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state" (Art. 9, Sec. 1),

and

> "Laws shall be passed taxing * * * all real and personal property, according to its true value in money" (Art. 9, Sec. 3).

Of course no act other than one imposing the usual *ad valorem* tax could stand under such provisions.

DOUBLE TAXATION IS NOT FORBIDDEN.

And counsel cite a number of cases in which the Supreme Court of Minnesota has loosely said that double taxation

is forbidden by the constitution of the state. Some of these cases arose under the old constitution which did so operate. But there can be no question now that double taxation is no more forbidden by the uniformity provision of the State Constitution than it is by the equal protection clause of the Federal Constitution.

Double taxation, or any form of unequal taxation, is permissible if there be just basis for it.

State v. Probate Court, 145 Minn. 155, 160.

State v. Tax Commission, 136 Minn. 260, 263.

State v. Royal Mineral Association, 132 Minn. 232.

and

Fort Smith Lumber Co. v. Arkansas, 251 U. S. 532, 533.

Shaffer v. Carter, 252 U. S. 37, 58.

Cream of Wheat Co. v. Grand Forks, 253 U. S. 325, 330.

LaCoste v. Louisiana, 263 U. S. 545, 552.

THERE IS NO IMPAIRMENT OF CONTRACT OBLIGATIONS.

There is the suggestion in one of the briefs for appellants that the imposition of a tax on royalties impairs the obligations of contracts. Plainly this is without merit.

Moffitt v. Kelly, 218 U. S. 401.

North Missouri R. R. Co. v. Maguire, 20 Wall. 46.

ROYALTIES RECEIVED BUT NOT EARNED IN 1923.

It is claimed in *Bardwell, et al. v. Sargent Land Co., et al.* (No. 471), that the state intends to impose the tax on royalties received in 1923 on account of ore mined and removed during the year 1922, and that it intends to tax cer-

tain delinquent royalties which, although payable in earlier years, were not received until 1923. The trial court did not attempt to interpret the law so as to determine precisely what royalties are within its operation. We do not discuss this issue because it presents a purely local question of statutory construction upon which we assume this court will not pass, although within its jurisdiction. Here, it will be taken for granted that the act will be so interpreted in the state courts as to remove any constitutional objection to it.

Situs.

The subject of the tax is within Minnesota.

Those appellants who are not residents of Minnesota and who receive outside of the state the money paid to them under their mining leases, from lessees within the state as well as from lessees without the state, attack the law on the ground that the subject of the tax has no situs in Minnesota. They contend that as to them the act attempts to impose a tax upon a subject over which the state has no jurisdiction, in violation of the due process clause of the Fourteenth Amendment, and that it deprives them of the privileges and immunities of citizens of the United States. All of their arguments depend upon a mixed question of law and fact: Has the state undertaken to reach a subject of taxation not within its borders?

They say that as to them the act cannot stand as a tax against persons not within the state, nor as a tax on money as such not within the state. We grant that it is not a tax on the person such as a poll tax, nor a tax on money as tangible property. The legislature knew that many receivers of royalty are non-residents and that much of the money

paid by lessees of mines does not physically enter the state. Its declaration that the situs of royalty shall be in Minnesota discloses that it had no intention of taxing persons outside the state, nor of taxing the dollars with which the royalty is paid.

But whatever name may be given to the tax, the subject of its incidence—whether that be land or some interest in land, or ore, or business, privilege, right, gain, profit, or whatever else—is so inseparably related to and connected with the land and the ore out of which it arises and with the mining operation that produces it that its situs is fixed and controlled by the land, the ore, and the operation.

The cases cited by appellants deal generally with the law of situs of property for purposes of taxation. The principles laid down in some of them distinctly support the state's position. None of them deny the power of the state to lay and collect a tax like the one here under consideration. The decisions to which we call the court's attention are such that we may, regardless of the nature of this tax, say that the question has in a concrete manner been determined against appellants' contention.

Two Michigan cases recognize that royalties and all other rights of the lessor in a lease of Minnesota ore lands have their situs in Minnesota and cannot be taxed elsewhere. One of these is *In re Rust's Estate*, 213 Mich. 138. There the state of Michigan attempted to impose an inheritance tax upon the royalty interest under the Rust lease, the very lease in respect of which the appellants in the Burrows case (No. 355), now before this court, are denying the jurisdiction of Minnesota. The Supreme Court of Michigan held that the situs of that lease and of the royalties to accrue thereunder was wholly in Minnesota, and that there was no property

or right or interest growing out of it which Michigan could tax because of its ownership by the Rust estate.

In *Saginaw v. Second National Bank*, 213 Mich. 590, the court again held that similar leases, together with the unaccrued royalties therein reserved and all of the estate, rights, titles, and interests specified, reserved, included in and represented thereby, were beyond the jurisdiction of the state of Michigan and, in effect, that the situs was in Minnesota.

In *State ex rel. Mariner v. Hampel*, 172 Wis. 67, the court held that the Wisconsin income tax law did not apply to the net proceeds of rentals of Michigan mines when received by Wisconsin residents. The decision is based upon an interpretation of a statute, but it illustrates the principle and policy of taxing royalties where they accrue.

In *Mt. Sterling Oil & Gas Co. v. Ratliff*, 127 Ky. 1, the court held that a non-resident corporation which had owned but had assigned an oil lease, one consideration of the assignment being that the assignee deliver to it one-sixteenth of all oil produced, was subject to taxation upon its royalty in Kentucky. Answering the contention that, since the company had parted with its leasehold and was not engaged in the production of the oil, the royalty right had its situs at the domicile of the owner, the court said:

> "The first contention is manifestly unsound. Whether the right reserved to appellant by the lease contract to one-sixteenth of the oil produced by its assignee be called personal property, a chattel real, incorporeal hereditament, or privilege, it is property and as such subject to taxation, and it is property and as such subject to taxation under Section 4030, Kentucky Statutes, 1903. * * * By the use of the words 'any coal, oil or gas privileges by leases or otherwise or any interest therein,' 'the

legislature intended to make just such an interest or privilege as appellant owns in the oil produced, or a right to a part of what may be produced by its assigns, property, and to tax it as such in the county where it is situated, the privilege exercised or the benefit received, though the owner be a non-resident of the county or of the state.' *Commonwealth v. Dunn & Co.*, 126 Ky. 108, 102 S. W. 859."

The rulings of this court are along similar lines and, in our judgment, specifically decide the question in favor of the state.

In *Rogers v. Hennepin County*, 240 U. S. 184, 191, the court upheld the right of the state of Minnesota to impose a tax upon a non-resident of Minnesota on account of his ownership of a member in the Minneapolis Chamber of Commerce. The membership was assessed as "money and credits," as defined by the Minnesota statutes. Whether the membership was properly taxed as money and credits was not considered either by the Minnesota Supreme Court or by this court. The court was first compelled to consider whether the membership was taxable property and the ruling was in the affirmative. Then came consideration of the right to tax a non-resident upon his ownership of such a membership. In sustaining the right, the following was said:

"There is the further contention with respect to the authority of the state to tax the memberships owned by citizens of other states. It is urged that the memberships are intangible rights held by the member at his domicile. But it sufficiently appears from the allegations that the memberships represented rights and privileges which were exercised in transactions at the exchange in the city of Minneapolis, and, we are of the opin-

ion, applying a principle which has had recognition with respect to credits in favor of the non-residents arising from business within the state, and in the case of shares of stock of domestic corporations, that it was competent for the state to fix the situs of the memberships for the purpose of taxation, whether they were held by residents or non-residents, at the place within the state where the exchange was located. *Tappan v. Merchants Bank*, 19 Wall. 490, 499; *New Orleans v. Stempel*, 175 U. S. 309, 319; *State Board v. Comptoir National*, 191 U. S. 388, 403; *Corry v. Baltimore*, 196 U. S. 466, 474; *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S. 395, 402; *Liverpool Ins. Co. v. Orleans Assessors*, 221 U. S. 346, 354, 355; *Hawley v. Malden*, 232 U. S. 1, 12."

In *Citizens National Bank of Cincinnati v. Durr*, 257 U. S. 99, the court held that a membership in a stock exchange might also be taxed to the owner by the state of his domicile, and declared that a property right may be of such a nature that it may have a situs in two jurisdictions at the same time. The court said:

"Nor is plaintiff's case stronger if we assume that the membership privileges exercisable locally in New York enable that state to tax them even as against a resident of Ohio. (See *Rogers v. Hennepin County*, 240 U. S. 184, 191.) Exemption from double taxation by one and the same state is not guaranteed by the Fourteenth Amendment (*St. Louis Southwestern Ry. Co. v. Arkansas*, 235 U. S. 350, 367-368); much less is taxation by two states upon identical or closely related property interests falling within the jurisdiction of both, forbidden. *Kidd v. Alabama*, 188 U. S. 730, 732; *Hawley*

v. Malden, 232 U. S. 1, 13; *Fidelity & Columbia Trust Co. v. Louisville*, 245 U. S. 54, 58."

In *Savings & Loan Society v. Multnomah County*, 168 U. S. 421, the court (distinguishing cases of *State Tax on Foreign-Held Bonds*, 15 Wall. 300, and *Kirtland v. Hotchkiss*, 100 U. S. 491) upheld an Oregon statute imposing a tax upon mortgages on Oregon lands as against the objection of a non-resident mortgagee. It is true that the statute declared that the mortgage should be treated as land, but the effect of the holding is none other than to declare that a state may fix the situs of a taxable subject other than tangible personal property. The court said that a state

> "may for the purpose of taxation either treat the mortgage debt as personal property to be taxed like other choses in action to the creditor at his domicile; or treat the mortgagee's interest in the land as real estate to be taxed to him like other property at its situs."

But the controlling and decisive case is *Shaffer v. Carter*, 252 U. S. 37, particularly when read in connection with the cases which follow and amplify its rulings. In this case the court sustained the validity of an income tax law of Oklahoma which, in its application to non-residents, provided that a tax should be levied annually "upon the entire net income from all property owned, and of every business, trade or profession carried on in this state by persons residing elsewhere." The tax when delinquent became a lien on the non-resident's property. The act was assailed by a resident of Chicago in so far as it brought his income from oil lands and oil leases within the scope of its operation. The reported case discloses these facts:

> "It appears that the appellant manages his business

from his office in Chicago; devotes his time, energy and judgment to it; makes his purchases of supplies and materials, with minor exceptions, from that office, buying outside of Oklahoma and having his purchases shipped in; the contracts for the sale of oil are made by him in Chicago with non-residents of Oklahoma, and these non-residents pay him by checks drawn at their offices, outside of Oklahoma, on banks outside of that state and send the checks to him in Chicago. The actual money constituting his income is never in Oklahoma. The net income, which is all the state is attempting to tax, is never there. He does not call on the state to assist him in collecting his income, and if any of the non-residents to whom he sells oil should breach their contracts he would not call on the courts of Oklahoma for redress."

Every constitutional objection offered by appellants in this case was urged by him in his attack upon the law. We quote only a small portion of the applicable part of the opinion itself, as follows:

"In our system of government the states have general dominion, and, saving as restricted by particular provisions of the Federal Constitution, complete dominion over all persons, property, and business transactions within their borders; they assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses. Certainly they are not restricted to property taxation, nor to any particular form of excises. In well-ordered society, property has value chiefly for

what it is capable of producing, and the activities of mankind are devoted largely to making recurrent gains from the use and development of property, from tillage, mining, manufacture, from the employment of human skill and labor, or from a combination of some of these; gains capable of being devoted to their own support, and the surplus accumulated as an increase of capital. That the state, from whose laws property and business and industry derive the protection and security without which production and gainful occupation would be impossible, is debarred from exacting a share of those gains in the form of income taxes for the support of the government, is a proposition so wholly inconsistent with fundamental principles as to be refuted by its mere statement. That it may tax the land but not the crop, the tree but not the fruit, the mine or well but not the product, the business but not the profit derived from it, is wholly inadmissible."

"That a state, consistently with the Federal Constitution, may not prohibit the citizens of other states from carrying on legitimate business within its borders like its own citizens, of course is granted; but it does not follow that the business of non-residents may not be required to make a ratable contribution in taxes for the support of the government. On the contrary, the very fact that a citizen of one state has the right to hold property or carry on an occupation or business in another is a very reasonable ground for subjecting such non-resident, although not personally yet to the extent of his property held, or his occupation or business carried on therein, to a duty to pay taxes not more onerous in effect than those imposed under like circumstances upon citizens of the latter state. Section 2 of Art. IV of the

Constitution entitled him to the privileges and immunities of a citizen, but no more; not to an entire immunity from taxation, nor to any preferential treatment as compared with resident citizens. It protects him against discriminatory taxation, but gives him no right to be favored by discrimination or exemption. See *Ward v. Maryland*, 12 Wall. 418, 430."

In *Travis v. Yale & Towne Mfg. Co.*, 252 U. S. 60, decided at the same time as *Shaffer v. Carter*, there was a similar ruling as to the jurisdiction of the state over income or receipts of non-residents from property owned or business done by them within the state. In this case, among other things the court recognized the right of the state of New York to compel a foreign corporation, doing business within the state, to withhold from the wages or salaries of non-residents of New York working for it the income tax chargeable against such non-resident wage earners, and for that purpose to require that the wages be paid in New York rather than at one of the company's more convenient offices.

The inseparable relation between property situated within a state and the income which arises out of it is illustrated in *Gillespie v. Oklahoma*, 257 U. S. 501, where, in considering the same tax law passed upon in *Shaffer v. Carter*, the court held that there could be no taxation under that law of income arising out of leases of oil lands made by the government upon Indian lands.

And the court further makes clear its view that income from land is distinguishable from income of the person who owns land, in *Atlantic Coast Line v. Daughton*, 262 U. S. 413, 420-421. The court said:

"That a state may, consistently with the Federal Constitution, impose a tax upon the net income of prop-

> erty, as distinguished from the net income of him who owns or operates it, although the property is used in interstate commerce, was settled in *Shaffer v. Carter*, 252 U. S. 37, 44, 52. * * * It is a common provision in state income tax laws to tax the net income of property within the state which is owned, or operated, by non-residents. The differences between the parties arise, in the main, not from difference in the method of determining what is net income, but from difference as to what is the subject of the tax. In other words, they differ as to the thing of which the net income is to be ascertained. This will appear from an examination of the several grounds on which the validity of the statute is assailed."

That the tax may be made a lien upon the land mined, to the extent of the interest therein of the person to whom the royalty is payable, cannot be questioned.

Shaffer v. Carter, 252 U. S. 37, 49, 59.
Bristol v. Washington County, 177 U. S. 133.
Hodge v. Muscatine County, 196 U. S. 276, 280.

PAYMENTS MADE UNDER SARGENT LAND COMPANY CONTRACT (EXHIBIT 2) ARE ROYALTIES WITHIN THE MEANING OF THE ACT.

The appellants in the Bardwell case (No. 471) contend that the payments described in Exhibit 2 of their bill of complaint (R. 23) are not royalties and for that reason not within the operation of the act. They say that the instrument is a sale of ore in place and the payments installments of purchase price.

There are several answers to this contention, some stand-

ing on narrow grounds, and others based on reasons that are comprehensive and conclusive.

The discussion may be opened by noting that the rule in Minnesota is that tax statutes are given a construction liberal to the state in matters relating to the method of taxation and the determination of the tax, and are not to be strictly construed in favor of the taxpayer.

State v. Western Union Telegraph Co., 96 Minn. 13, 18.
State v. Crete Mining Co., 204 N. W. 932.

The act here in question defines royalty as money or property received by any person having any right, title or interest in or to any land "for permission to explore, mine, take out, or remove ore therefrom." It is what is paid to the owner of the *land* and not necessarily the owner of the *ore;* and it is not limited to payments made under leases.

Aside from the statutory definition, the term "royalty" as commonly used includes payments of the purchase price of ore in place when actually so sold. It is so used in a number of decisions dealing with such contracts.

Hosack v. Crill, 204 Pa. 97.
Sturdevant v. Thomson, 280 Pa. 233.
National Coal Co. v. Overholt, 81 W. Va. 427.
Burke Hollow Coal Co. v. Lawson, 151 Ky. 305.
Halla v. Rogers, 100 C. C. A. 263, 266.

By the terms of Exhibit 2 the Sargent Land Company "sells to the vendee all of the iron ore in, under or upon the lands above described, and every part thereof, the same to be mined and removed by the vendee on or before the expiration of fifty (50) years from the first day of January, 1918" (R. 24).

A "sale' usually denotes transfer of ownership of per-

sonal property. It may manifest an intent to convey title to real property;

> "but when the purpose of the transaction is stated the word will ordinarily have no more effect upon the title than is necessary to accomplish the purpose."
>
> *Taylor v. Burns*, 203 U. S. 120, 125.

Here the purpose of the transaction is the removal of the ore from its bed, and the effect of the contract is to permit the operator to so remove it at a stipulated price per ton.

As said in *Halla v. Rogers*, 100 C. C. A. 263, 266:

> "The owner may, on the other hand, convey the minerals upon condition that the vendee extract them by a specified time, or in a stipulated mode, or that title shall pass only when certain royalties be paid; in these instances there is no present consummated sale."

Here there is no conveyance, but at most a conditional sale; the ore must be removed within a specified time (R. 24, Art. II) and by stipulated methods (R. 27, Art. VII); and title to the ore is reserved in the owner until the "purchase price" of the ore shall have been fully paid (R. 34, Art. XIII).

It would avail appellants nothing if their claim that the Sargent Land Company has divested itself of title to the ore were true. That would mean only that the company is no longer the owner of the *ore*. It still owns the land in which the ore lies. And the statute defines royalty as payments made to the owner of the *land* for permission to mine and remove the ore.

By Exhibit 2 the landowner

> "gives and grants to the vendee the right to enter upon said lands, and any part thereof, for the purpose of exploring for, mining and removing said iron ore,"

with full authority to do thereon all things needful in the mining and treatment of the ore, including the use of the timber on the land for that purpose, and the right to erect on the unused portions of the land store buildings and houses (R. 24, Art. II).

Appellants cite Minnesota cases to the proposition that a sale of standing timber carries with it the right to go on the land to remove it. In each of those cases the instrument construed specifically granted such permission. But aside from that, since Exhibit 2 in terms grants such permission, it cannot be said that the payments to be made are consideration for the ore alone and not consideration for permission to remove it. The clause quoted is quite broad enough to invest the operator with the right to remove the ore and with title to the ore upon payment of the stipulated consideration, without resort to the "sale" clause of the contract; hence the entire consideration may well be said to be for the permission to mine and remove.

But the comprehensive and conclusive answer to the contention that payments made under Exhibit 2 are not royalties is that the relationship and rights of the parties to it are identical with those created by the ordinary mining lease that gives permission to mine and remove ore and calls for the payment of royalties.

While the instrument is in form a contract of sale of ore in place, it is in fact identical with the usual mining lease, so far as the application to it of this statute is concerned. It runs for the usual fifty-year period (R. 24, Art. II). It may be terminated by the operator at any time (R. 28, Art. XV) and by the owner in case of default (R. 35, Art. XIII, Sec. 4). Payments are measured by the tonnage removed (R. 25, Art. IV, Sec. 1). It requires the usual annual minimum advance payments (R. 25, 26, Art. IV, Sec. 3) and

provides for the application of such minimum payments to future removal of ore (R. 26, 27, Art. IV, Sec. 5). Title to each ton of ore removed remains in the owner "as security" until it is paid for (R. 34, Art. XIII, Sec. 1). The ore does not become the absolute property of the operator until it has been removed and paid for. The arrangement for payment and adjustment during the last ten years of its term (R. 26, Art. IV, Sec. 4) is not important: it amounts to nothing more than payment for the ore by the ton as it is removed. It gives the operator the right to use and occupy the surface (R. 24, Art. II). It in terms prohibits "subletting," and the operator may not assign his right or sell the ore in place (R. 30, Art. VII, Sec. 7). It specifically grants to the operator the right to enter upon the lands for the purpose of "exploring for, mining and removing" the ore (R. 24, Art. II)—and the compensation for this very thing the statute calls royalty.

The only differences between Exhibit 2 and the usual mining lease are verbal differences. The lessor is called the vendor, and royalty is called purchase price. The rights and obligations of the parties are identical with those created by a mining lease. The vendee under Exhibit 2 may do as much as and must do not less than the lessee under a mining lease. The form of the contract does not change the character of the payments made under it.

Minnesota Loan & Trust Co. v. Douglas, 135 Minn. 413, 421.

Whatever may have been the intention of the parties, the law must determine the character of these payments.

Minnesota Loan & Trust Co. v. Douglas, 135 Minn. 413, 421.

The act must, so far as its language will permit, be so

construed as to fit in logically with the taxing scheme adopted by the legislature. A consideration of that scheme makes it clear that the legislature meant to include such payments in its definition of royalty. Laws 1921, Chapter 223, imposing on mine operators a tax of six per cent of the value of the ore produced, permits them to deduct from that value royalties paid. This act rounds out the plan by imposing a tax at a like rate on the royalties. The two acts should be considered together.

Royster Guano Co. v. Virginia, 253 U. S. 412.

A comparison of this mining contract with the usual mining lease discloses no basis for permitting deduction of payments by the operator in the one case and not in the other. Nor does any reason appear why the owner of the land from which the removal of ore is permitted should be subject to a tax on royalties in the one case and not in the other.

Another answer to appellants' contention is that, since there is no difference in substance between payments made under Exhibit 2 and royalties paid under the usual mining lease, the exemption of the former from taxation would raise a grave doubt as to the validity of the act under the equal protection clause of the Federal Constitution and Section 1 of Article 9 of the State Constitution. The act will be construed so as to avoid that doubt if it be possible.

Panama R. R. Co. v. Johnson, 264 U. S. 375, 390.

The act is quite broad enough to apply to payments made under Exhibit 2. That construction removes any doubt as to constitutionality that might otherwise present itself on the ground of discrimination. And since the language of the act is susceptible of that construction the courts will so construe it.

Arkansas Gas Co. v. R. R. Commission, 261 U. S. 379, 383.

We respectfully submit that the decrees appealed from should be affirmed.

CLIFFORD L. HILTON,
Attorney General of Minnesota,
G. A. YOUNGQUIST,
Assistant Attorney General,
PATRICK J. RYAN,
St. Paul, Minnesota,
Solicitors for Appellees.